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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 206 OF 2007

Sandeep Karmarkar . . . Applicant

Vs.

The State of Maharashtra . . . Respondent

Mr. Shinde, advocate for the applicant.

Mrs. M. H. Mhatre, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : FEBRUARY 15, 2007.

P.C.

. Heard Mr. Shinde, learned counsel for the applicant and Mrs. M. H. Mhatre, learned APP for the State. The applicant seeks to be released on bail in Crime No. 80 of 2006, registered with Deolali Police Station, for the offences punishable under S. 302, 363, 376 read with S. 34 of I.P.Code.

2. The prosecution case is that, on 4-7-2006 at about 8 p.m. Priyanka, daughter of Dr. Lakhariya of Nasik, was kidnapped by accused no.1 Kailas Navekar. The girl was aged about 14 years. She was taken to the

Deolali Camp firing range area. The girl was missing for 3-4 days and in spite of search, she could not be found. Lateron her dead body was found in highly decomposed condition in Deolali Camp firing range Area. During investigation it was revealed that she was kidnapped by accused no.1 Kailash Navekar. He had taken her from the city to the spot of incident by an auto rickshaw No. MH-15/2293 of the present applicant. Initially the statements of some auto drivers, working in that area were recorded, but nobody gave any information. However, on the basis of the information given by accused no.1, it is revealed that he had noted the rickshaw number noted in his pouch. On that basis the present applicant came to be arrested on 1-10-2006. Thereafter statements of some witnesses were recorded. There are at least 3 persons, who claimed to have seen accused no.1 and the deceased girl at the rickshaw stand, where they had taken tea. Then the girl was forced to sit in the auto rickshaw of the present applicant and thereafter the present applicant

had taken away the boy and the girl in his riskshaw in high speed, towards Deolali. Besides this, statement of Dr. Sameer Dere, who is a family physician, practicing at Nasik, shows that the present applicant and his family members are regularly taking treatment from him. According to him, the accused had come to him thrice, complainaing of headache, sleeplessness and fever after the newspaper reporting about missing and finding of dead body of daughter of Lakhariya. During that period, he used to be frightened and he had requested for sum drug, so that he could sleep peacefully. It indicated that there was something seriously wrong with him. According to prosecution, during the interrogation, present applicant had agreed to show the spot of incident to the police and he took the police and panchas to the same spot, which was shown earlier by another accused. Admissibility of this evidence may be in question. However, according to prosecution, it indicates that accused was aware about the place where the offence of rape and murder was committed.

3. The learned counsel for the applicant contends that there is no direct evidence to involve the applicant in the commission of the offence and the circumstantial evidence relied upon by the prosecution is weak and not reliable. He also contends that the witnesses on whom the prosecution relies against the present applicant had made material changes in their statements. In their earlier statements they had shown ignorance about the girl and had refused to identify her from the photograph but lateron they identified the said girl as the one taken by accused no.1 in the rickshaw of the present applicant. According to learned counsel for the applicant, in view of this nature of evidence, there is no prima facie case against the present applicant and he deserves to be granted bail.

4. Learned APP Mrs. Mhatre, however, opposed the application on the ground that the whole case is based on circumstantial evidence. The witnesses have explained the

reasons as to why in their earlier statements they had not disclosed the true facts. She contends that if at this stage bail is granted, the possibility of tampering with the prosecution evidence, cannot be ruled out.

5. Undoubtedly, the present applicant and accused no.1 are arrested, for the serious offence of rape and murder of 14 year old girl. The whole case is based on circumstantial evidence. It is not the stage to make any comment on the reliability or otherwise of the witnesses, on whom prosecution relies heavily. In view of the gravity of the offence, the possibility of tampering with the evidence cannot be ruled out. Therefore, in my considered opinion, it is not a fit case to grant bail, but it will be desirable to expedite the trial of the case.

6. For the aforesaid reasons, the application stands rejected. However, the learned Additional Sessions Judge Nashik is hereby directed to expedite trial and dispose

off the matter as early as possible, preferrably within three months.

[J. H. BHATIA, J.]